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Stay Order Argued in Nixon Case

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Attorneys for Richard M. Nixon asked a three-judge appeals court panel yesterday to continue its stay of a Friday order on presidential tape recordings and documents, claiming the lower court judge failed to follow proper procedures in his haste to decide the case.

U.S. District Judge Charles R. Richey ruled Friday that the tapes and documents from the Nixon administration belong to the government and not to the former President. However, his ruling was stayed almost immediately by the appeals court.

Nixon attorney Herbert J. Miller said yesterday the continued stay is necessary to permit Nixon to press the issues of ownership and privilege before a separate three-judge panel in a challenge to the constitutionality of a law passed concerning the same material. This three-judge panel would consist of two District Court judges and one appeals court judge.

The main issue at this point is whether Richey was correct in deciding the issues of ownership and privilege in relation to presidential materials before he decided whether the constitutionality of a new law involving the tapes could be challenged before such a three-judge court.

A ruling on a constitutional challenge before the proposed panel would be appealed directly to the U. S. Supreme Court, apparently the route that Nixon's attorneys would prefer to take in the maze of litigation that has arisen over the White House tapes and documents.

If Richey's Friday order is allowed to stand, any appeal of that decision would have to take the more circuitous route through the U. S. Court of Appeals before reaching the high court. Only rarely are district judges' decisions directly appealable to the Supreme Court.

Yesterday's two-hour hearing before U.S. Circuit Judges Spotswood Robinson III and Malcolm R. Wilkey, along with senior circuit judge Walter Bastian, proceeded for the most part along technical legal lines.

The panel took the case under advisement.

After Miller cited his request for maintaining the status quo so he could argue the constitutionality of the law before a three-judge panel, Justice Department attorney Irwin Goldbloom also said he felt the newly passed Presidential Recordings and Materials Preservation Act required that a decision come first on the issue of a three-judge court.

"Any fair reading" of that statute makes that requirement clear, Goldbloom said.

Assistant Watergate Special Prosecutor Peter Kreindler said he saw no need for any further stay of Richey's order, since the judge has already announced he will take up the issue of the convening of a three-judge panel this week.

Kreindler said, however, that he felt Richey could have gone ahead with the ruling as he did Friday even if he had decided previously that a three-judge court was needed on certain other "overlapping" issues in the pending suit.

The special prosecutor's office said it wants Richey's order enforced so prosecutors could have access to tapes and documents they need for ongoing criminal investigations.

"Our harm would come in an extended stay of Judge Richey's order," Kreindler told the judges.

Attorneys for various groups who want access to the materials under the Freedom of Information Act also argued against a stay, and for immediate enforcement of Richey's order.